

### **C.) REMARKS**

This Response is filed in response to the Office Action dated December 5, 2006.

Upon entry of this Response, claims 1-15 will be pending in the Application.

In the outstanding Office Action, the Examiner withdrew from consideration claims 16-28; rejected claims 1, 4-7, 10 and 12 under 35 U.S.C. § 103(a) as being unpatentable over Skinner (U.S. Patent No. 5,148,989) hereafter "Skinner"; rejected claim 3 under 35 U.S.C. § 103(a) as being unpatentable over Skinner in view of Kusilek et al. (U.S. Patent No. 6,354,521) hereafter "Kusilek" and indicated claims 2, 8, 9, 11 and 13-15 would be allowable if rewritten in independent form.

Claim 1 has been amended to remove the word "for", to clarify the invention.

### **Rejection under 35 U.S.C. 103**

#### **A. Rejection of claims 1, 4-7, 10 and 12**

The Examiner rejected claims 1, 4-7, 10 and 12 under 35 U.S.C. § 103(a) as being unpatentable over Skinner.

Specifically, the Examiner stated that

Skinner discloses a dispersal system used with an airborne craft, the system comprising a vessel 12 holding a material to be dispersed, the vessel being secured within the craft, a dispenser 36 to controllably dispense the material from the vessel wherein the dispenser has a plurality of vanes as recited in claim 4, a conduit 16 having a first end secured in fluid communication with the vessel and a second end controllably directing the dispensed material adjacent to the ground. Since Skinner discloses all of the structural limitations of the instant invention, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have recognized that the device of Skinner can be used to disperse fire suppression material also since it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art

apparatus satisfying the claimed structural limitations. Regarding claim 12, the device can dispense material from ground level to the height as recited since the device is on an aircraft.

Applicants respectfully traverse the rejection of claims 1, 4-7, 10 and 12 under 35 U.S.C. § 103(a).

Skinner, as understood, is directed to a system for dispensing insects from a moving vehicle.

In contrast, independent claim 1 recites a dispersal system for fire suppression material for use with an airborne craft, the system comprising: a vessel holding at least one fire suppressant material therein, the vessel being secured within or adjacent to an airborne craft; a dispenser for controllably dispensing the at least one fire suppressant material from the vessel; and a conduit, the conduit having a first end secured in fluid communication with the vessel and a second end adapted for controllably directing the dispensed material adjacent to ground level. (Emphasis added)

Several of the features recited by Applicant in independent claim 1 is not taught or suggested by Skinner. First, as conceded by the Examiner, Skinner does not teach or suggest dispersing fire suppression material as recited by Applicant in independent claim 1. Second, as will be further discussed in additional detail below, Skinner does not dispense adjacent to ground level.

Applicant submits that dependent claims 4-7, 10 and 12 are distinguishable from Skinner for at least the following reasons. To begin, dependent claims 4-7, 10 and 12 are believed to be distinguishable from Skinner as depending from what is believed to be allowable independent claim 1 as discussed above.

The Examiner is reminded that

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

See MPEP § 2143.03.

Furthermore, "[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art suggests the desirability of the combination." See Manual of Patent Examining Procedure, 8<sup>th</sup> Edition (MPEP), Section 2143.01.

The Examiner is also reminded that "[i]f the proposed modification or combination of the prior art would change the principle or operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious." See MPEP, Section 2143.01.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

See Manual of Patent Examining Procedure, 8<sup>th</sup> Edition (MPEP), Section 2143.03.

"In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. (citations omitted)." See MPEP § 2141.01(a). In this case, Skinner is not in the same field endeavor as Applicant's invention nor is Skinner reasonably pertinent to the particular problems with which the inventor is concerned. As discussed above, Applicant submits that one skilled in the art of fire fighting would not look to a reference directed to dispensing insects to solve problems for dispensing fire suppressant material adjacent to ground level.

"If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not

sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)." *See* Manual of Patent Examining Procedure, 8<sup>th</sup> Edition (MPEP), Section 2143.01.

"If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)." *See* Manual of Patent Examining Procedure, 8<sup>th</sup> Edition (MPEP), Section 2143.01.

The insect dispenser of Skinner includes a chute having multiple, specially configured sections employing the venturi principle to more gradually accelerate insects to the speed of the conveying vehicle so that the insects are not harmed during the dispersion process. The last segment in the chute includes a broad flare to increase the venture effect and to also widely disperse insects. (*See* col. 7, lines 64-66 of Skinner) (Emphasis added). Stated another way, the object in Skinner is to not only disperse insects at a velocity that is substantially the same as the velocity of the conveying vehicle in a manner that would not harm the insects, but further includes the need to disperse the insects in as wide a manner as possible to enhance survivability of the insects. For survivability reasons, the insects would not be dispensed adjacent to the ground, nor would the insects be dispensed at tree level. The Skinner construction is incompatible with the application of fire suppressant foam by the present invention, which requires a vessel, pumps and a conduit in order to apply a

precise, thorough, controlled application of pressurized fire suppressant from the pumping system to create a desired fire break along or near ground level by dispensing fire suppressant material therealong, or multiple fire breaks as desired, irrespective of terrain.

(*See* paragraph [0026] of the present invention). Such foam must be applied at a sufficiently higher pressure than ambient to dispense a controlled and focused spray that can be provided at a sufficient concentration for the fire suppressant to function as desired. In addition, the foam must be applied adjacent to ground level to function as desired. The Skinner construction does not dispense insects at a higher pressure, but rather the insects are drawn through the chute construction by the reduced pressure venturi effect and acts to further disperse the insects, and the insects are not dispersed adjacent to ground level.

Therefore, in view of the above, it is respectfully submitted that claims 1, 4-7, 10 and 12 under 35 are not anticipated nor rendered obvious by Skinner and are therefore allowable.

**B. Rejection of claim 3**

The Examiner rejected claim 3 under 35 U.S.C. § 103(a) as being unpatentable over Skinner in view of Kusilek.

Specifically, the Examiner stated that

Kusilek et al. teaches a quick disconnect and release hose coupling comprising a release mechanism 22 secured to a source of material and interposed between the source of material and a conduit 12 for quick separation from the material source. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Skinner by providing a release mechanism between the vessel and the conduit as taught by Kusilek et al. to be able to replace the conduit.

Applicants respectfully traverse the rejection of claim 3 under 35 U.S.C. § 103(a).

Skinner, as understood, is directed to a system for dispensing insects from a moving vehicle as previously discussed.

Kusilek, as understood, is directed to a quick disconnect and release hose couplings.

Applicant submits that dependent claim 3 is distinguishable from Skinner and Kusilek for at least the following reasons. To begin, dependent claim 3 is believed to be distinguishable from Skinner and Kusilek as depending from what is believed to be allowable independent claim 1 as discussed above.

**Allowable Subject Matter**

The Examiner objected to claims 2, 8, 9, 11 and 13-15 as being dependent upon a rejected base claim, but indicated that the claims would be allowable, if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant appreciates the Examiner's indication of allowable subject matter, but believes that all of the claims are allowable for the reasons given above.

Applicant requests rejoinder of the claims previously withdrawn by the Examiner.

**CONCLUSION**

In view of the above, Applicant respectfully requests reconsideration of the Application and withdrawal of the outstanding objections and rejections. As a result of the remarks presented herein, Applicant respectfully submits that claims 1-15 are not anticipated by nor rendered obvious by Skinner and Kusilek or their combination and thus, are in condition for allowance. As the claims are not anticipated by nor rendered obvious in view of the applied art, Applicant requests allowance of claims 1-15 in a timely manner. If the Examiner believes that prosecution of this Application could be expedited by a telephone conference, the Examiner is encouraged to contact the Applicant.

The Commissioner is hereby authorized to charge any additional fees and credit any overpayments to Deposit Account No. 50-1059.

Respectfully submitted,  
**McNEES, WALLACE & NURICK LLC**

/K. Scott O'Brian/

By

**K. Scott O'Brian**  
Reg. No. 42,946  
100 Pine Street, P.O. Box 1166  
Harrisburg, PA 17108-1166  
Tel: (717) 237-5258  
Fax: (717) 237-5300

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